

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 12/15/2022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHRISTIAN PAUL ENZO KLEIN,

Plaintiff,

-against-

METROPOLITAN TRANSIT
AUTHORITY, *et al.*,

Defendants.

21-CV-7118 (JPC) (JLC)

ORDER OF SERVICE

James L. Cott, United States Magistrate Judge:

By Order dated January 21, 2022, Judge Cronan instructed the Clerk of Court to issue summons and deliver to the Marshals Service all paperwork necessary for the Marshals to effect service upon all defendants, including defendant Kirk Thomas. Dkt. No. 25. Subsequently, the Marshals attempted personal service on Thomas on two occasions at the residential address provided by counsel for defendant Metropolitan Transit Authority (“MTA”), but service was not successful (the Marshals filed a “Process Receipt and Return” form detailing their attempts to serve Thomas, *see* Dkt. No. 67).¹ Accordingly, a sufficient showing of due diligence having been made, plaintiff is entitled to use the provisions of New York C.P.L.R. § 308(4) to effectuate service on Thomas.

The Court hereby directs the Clerk of Court to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for Thomas using the

¹ Pursuant to the Court’s Order dated August 5, 2022, counsel for the MTA confirmed the last known address in its records for Thomas is 401 Seneca Avenue, Mount Vernon, New York 10553. Dkt. No. 49.

residential address previously provided. The Clerk of Court is further instructed to issue a new summons and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon Thomas. *See Walker v. Schult*, 717 F.3d 119, 123 n.6 (2d Cir. 2013) (plaintiff proceeding IFP entitled to rely on court and U.S. Marshals Service to effect service); *see also* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (court must order Marshals Service to serve if plaintiff is authorized to proceed IFP). Given the failed prior attempts at service, the Marshals should serve Thomas by “nail and mail” service under New York C.P.L.R. § 308(4).

CONCLUSION

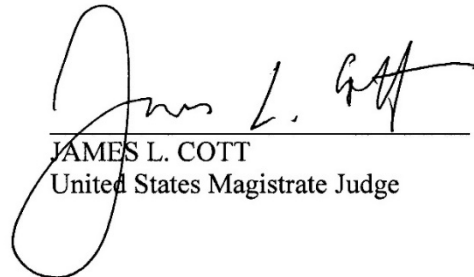
The Clerk of Court is instructed to complete a USM-285 form with the address for Kirk Thomas and deliver all documents necessary to effect service to the U.S. Marshals Service.

The Marshals are directed to serve the defendant by “nail and mail” service under New York C.P.L.R. § 308(4).

The Clerk of Court is directed to mail a copy of this order to plaintiff and note service on the docket.

SO ORDERED.

Dated: December 15, 2022
New York, New York


JAMES L. COTT
United States Magistrate Judge